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No. 46

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## H.R. 5 – Senior Citizens' Freedom to Work Act

Calendar No. 439

Passed the House of Representatives March 1, 2000, and ordered placed on the Senate Calendar on March 2, 2000. No Senate committee action.

### NOTEWORTHY

- H.R. 5 repeals the so-called earnings limit on some 800,000 Social Security recipients who are between the ages of 65 and 70. Those senior citizens who this year are earning more than \$17,000 in wages or self-employment income lose some of their Social Security benefits (equaling \$1 in loss for every \$3 they earn in income above the threshold amount, effectively imposing an additional 33-percent tax on these earners). The measure is retroactive to the beginning of the year.
- The House of Representatives passed H.R. 5 March 1, 2000, by a vote of 422-0.
- Republicans have been seeking repeal of this Depression-era provision in law literally for decades. Each Republican platform since at least 1980 has called for its repeal.
- A CBO estimate indicates that enactment will cost \$22.7 billion over the next 10 years. However, actuaries from the Social Security Administration have indicated that the cost of the measure over the long term is negligible.
- The White House did not release an official statement of administration policy. However, President Clinton sent a letter in support of the bill to House and Senate leaders on February 29, 2000, the day the bill was reported from the Ways & Means Committee. That letter says in part, "I encourage Congress to send me a clean, straightforward bill to eliminate the retirement earnings test above the normal retirement age." Yet Minority Leader Daschle on that same day indicated an interest in amendments: "It seems to me that regardless of whether we support or oppose a bill, we ought to have the right to offer amendments, we ought to have the right to use it as a vehicle," said Daschle in a discussion about H.R. 5 [source: *Associated Press*]. Subsequently, he revised his opinion but the media is now reporting Senator Bob Kerrey may seek to delay the bill's consideration.

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## HIGHLIGHTS

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- The Senior Citizens' Freedom to Work Act of 1999 amends title II, the Old Age, Survivors and Disability Insurance (OASDI), of the Social Security Act to repeal an outdated limitation on the amount of outside income which beneficiaries who have attained retirement age may earn (earnings test) without incurring a reduction in benefits.
- H.R. 5 assists approximately 800,000 Social Security recipients between the full retirement age (currently age 65) and age 70 by freeing them from the current law that reduces, and in some cases eliminates, their benefits if they work and earn more than the annual income limit (which equals \$17,000 in 2000).
- H. R. 5 affects income earned after December 31, 1999 (*i.e.*, beginning this year, seniors age 65 and older may work and earn unlimited income without losing any Social Security benefits).
- Repeal of the earnings limit is particularly beneficial to small business owners who are subject to both the dollar caps under the earnings limit and a more subjective and invasive self-employment test that often entails an extensive audit.

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## BACKGROUND

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[The following background information was taken from the House Republican Conference's Daily Digest of 2/25/00.]

### **What is the Social Security Earnings Limit?**

Originally designed to encourage seniors to retire, the limit reduces seniors' Social Security benefits if their earnings from wages and self-employment income exceed a specific threshold, or "earnings limit." In 2000, the earnings limit for working seniors between ages 65 and 69 is \$17,000. Under current law, Social Security benefits are reduced by \$1 for every \$3 of earnings that exceed the limit. The SSA also estimated that approximately 800,000 beneficiaries aged 65-69 lost some or all of their benefits under the earnings test.

The earnings test has always been one of the most unpopular features of the Social Security program, spawning perpetual congressional proposals to liberalize or eliminate the earnings limit.

## **History of the Earnings Limit**

The earnings test has existed since passage of the Social Security Act in 1935. With the 1960 Social Security Amendments (P.L. 86-778), Congress introduced the concept of reducing benefits by \$1 for each \$2 of earnings above the exempt amount. In 1972, Congress stipulated (P.L. 92-603) that the exempt amount under the earnings test be "indexed" to increase automatically with average wage levels. During consideration of major Social Security legislation in 1977, Congress debated whether to eliminate the earnings limit for persons over age 65. As a compromise, Congress enacted legislation (P.L. 95-216) to raise the earnings limit for individuals age 65 and older, and since then two different exempt amounts have applied, one for those under full retirement age (currently 65) and one for those between full retirement age and age 70.

The 1977 Social Security Amendments (P.L. 95-216) also lowered from 72 to 70 the age at which the earnings limit would no longer apply, to be effective in 1982, later postponed until 1983. The 1983 Social Security Amendments (P.L. 98-21) changed the withholding rate to \$1 of benefits for each \$3 of earnings for beneficiaries aged 65-69 (from \$1 of benefits for each \$2 of earnings), effective in 1990.

## **Recent Congressional Action**

As the crown jewel of the Contract with America, Congress passed a comprehensive tax package (H.R. 2491) that included, among other things, measures to gradually raise the Social Security earnings limit. However, President Clinton vetoed the measure. Later in the 104<sup>th</sup> Congress, lawmakers enacted the 1996 Senior Citizen's Right to Work Act (P.L. 104-121), which gradually raises the retirement earnings limit over five years to \$30,000 in 2002.

In 1998, the House approved the Taxpayer Relief Act (H.R. 4579) by a vote of 229-195. This measure would have accelerated the increase in the earnings test and raised the exempt amounts to \$39,750 in 2008. However, the Senate did not consider the bill before adjournment.

Critics of the earnings test maintain that it is a strong disincentive for seniors to work, as well as an oppressive tax. Further, they argue that it is unfair and inappropriate to impose a form of "means" test for a retirement benefit that has been earned by a lifetime of contributions to the program. They also maintain that it can hurt elderly individuals who need to work to supplement meager Social Security benefits, while those who have other forms of income are unaffected. The earnings limit penalizes older workers who are a critical part of the workforce. At this time when unemployment rates are at historic lows and people are living longer, its time for repeal has come.

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## **BILL PROVISIONS**

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### **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Senior Citizens' Freedom to Work Act of 2000'.

## **SEC. 2. ELIMINATION OF EARNINGS TEST FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.**

Section 203 of the Social Security Act (42 U.S.C. 403) is amended--

(1) in subsection (c)(1), by striking 'the age of seventy' and inserting 'retirement age (as defined in section 216(l))';

(2) in paragraphs (1)(A) and (2) of subsection (d), by striking 'the age of seventy' each place it appears and inserting 'retirement age (as defined in section 216(l))';

(3) in subsection (f)(1)(B), by striking 'was age seventy or over' and inserting 'was at or above retirement age (as defined in section 216(l))';

(4) in subsection (f)(3)--

(A) by striking '33 1/3 percent' and all that follows through 'any other individual,' and inserting '50 percent of such individual's earnings for such year in excess of the product of the exempt amount as determined under paragraph (8),'; and

(B) by striking 'age 70' and inserting 'retirement age (as defined in section 216(l))';

(5) in subsection (h)(1)(A), by striking 'age 70' each place it appears and inserting 'retirement age (as defined in section 216(l))'; and

(6) in subsection (j)--

(A) in the heading, by striking 'Age Seventy' and inserting 'Retirement Age'; and

(B) by striking 'seventy years of age' and inserting 'having attained retirement age (as defined in section 216(l))'.

## **SEC. 3. CONFORMING AMENDMENTS ELIMINATING THE EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.**

(a) **UNIFORM EXEMPT AMOUNT-** Section 203(f)(8)(A) of the Social Security Act (42 U.S.C. 403(f)(8)(A)) is amended by striking 'the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable' and inserting 'a new exempt amount which shall be applicable'.

(b) **CONFORMING AMENDMENTS-** Section 203(f)(8)(B) of the Social Security Act (42 U.S.C. 403(f)(8)(B)) is amended--

(1) in the matter preceding clause (i), by striking 'Except' and all that follows through 'whichever' and inserting 'The exempt amount which is applicable for each month of a particular taxable year shall be whichever';

(2) in clause (i), by striking 'corresponding';

(3) in clause (ii), in the matter preceding subclause (I), by striking 'corresponding' and all that follows through 'individuals)' and inserting 'exempt amount which is in effect with respect to months in the taxable year ending after 1993 and before 1995 with respect to individuals who have not attained retirement age (as defined in section 216(l))';

(4) in subclause (II) of clause (ii), by striking '2000' and all that follows and inserting '1992,'; and

(5) in the last sentence, by striking 'an exempt amount' and inserting 'the exempt amount'.

(c) REPEAL OF BASIS FOR COMPUTATION OF EXEMPT AMOUNT AFFECTING INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE- Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is repealed.

#### **SEC. 4. ADDITIONAL CONFORMING AMENDMENTS.**

(a) ELIMINATION OF REDUNDANT REFERENCES TO RETIREMENT AGE.

#### **SEC. 5. EFFECTIVE DATE.**

(a) IN GENERAL- The amendments and repeals made by this Act shall apply with respect to taxable years ending after December 31, 1999.

(b) SPECIAL RULE APPLICABLE TO INDIVIDUALS WHO ATTAIN NORMAL RETIREMENT AGE DURING THE FIRST TAXABLE YEAR ENDING AFTER DECEMBER 31, 1999.

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### **ADMINISTRATION POSITION**

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An official statement of administration policy was not issued by the Office of Management and Budget. However, President Clinton sent a letter in support of the bill to the House Speaker and Senate Majority Leader on February 29, 2000, the day the bill was reported from the House Ways & Means Committee. That letter says in part, "I encourage Congress to send me a clean, straightforward bill to eliminate the retirement earnings test above the normal retirement age."

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## **COST**

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A preliminary CBO estimate indicates that enactment of H.R. 5 will cost \$22.7 billion over the next 10 years. However, actuaries from the Social Security Administration have indicated that the cost of the measure over the long term is negligible.

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## **POSSIBLE AMENDMENTS**

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Roth. Technical correction.

Kerrey. Social security reform.

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